In the Supreme Court of Louisiania, April, 1855.

STATE *vs.* JAMES PATTON, APPELLANT.[1]

On a trial for murder, the prisoner's counsel were about calling witnesses to prove his insanity, when he interposed, refused to permit that defence to be set up, discharged his counsel and submitted his case to the jury without evidence. The counsel remonstrated and offered to establish his insanity by irresistible proof, but the Court overruled their objection, and refused to hear them further in his defence. *Held*, to be error, and that the evidence should have been permitted to go to the jury.

Appeal from the First District Court, New Orleans.

The opinion of the Court was delivered by

SPAFFORD J.—Upon the trial of James Patton for the murder of Walter Turnbull, the following bill of exceptions was taken by the prisoner's counsel:

Be it remembered, that on the trial of this cause, on the 20th day of March, 1854, after the evidence on the part of the State was closed, and when the counsel of the prisoner were proceeding to prove by the evidence of witnesses, the insanity of the said prisoner at the time of the killing set forth in the indictment, and a long time before, and ever since the said killing; the said prisoner arose and objected to and repudiated the said defence, and insisted upon discharging his counsel, and submitted his case to the jury without any further evidence or action of his counsel in his defence; his counsel opposed and remonstrated against the prisoner's being permitted to do so, alleging that they were prepared to prove the defence by clear and irresistible testimony; but the court overruled the objection of the said counsel, and permitted the prisoner to discharge his counsel, and refused to hear them further in his defence, and gave the case to the jury without any further evidence or pleading on his behalf; to all which opinion and ruling of said court the defendant's said counsel excepts, and prays his exceptions may be signed, &c.

(Signed) JOHN B. ROBERTSON, *Judge.*

[1] Monday, April 19th, 1855, before Thomas Slidell, Chief Justice; Cornelius Voorhies, A. M. Buchanan, A. N. Ogden, and H. M. Spafford, Associate Justices.

There was a verdict of "guilty without capital punishment"—and, after the former counsel had in the quality of *amici curiæ* attempted to obtain a new trial and arrest of judgment without success, the prisoner was sentenced to hard labor for life in the penitentiary.

From this judgment the present appeal has been taken:—

The sanity or insanity of the prisoner is a matter of fact; the admissibility of evidence to establish his insanity, under the circumstances detailed in the bill of exceptions, is a matter of law, and the only matter which the constitution authorizes this tribunal to decide.

The case is so extraordinary in its circumstances that we are left without the aid of precedents.

In support of the ruling of the district judge, it has been urged that every man is presumed to be sane until the contrary appears, and that a person on trial for an alleged offence has a constitutional right to discharge his counsel at any moment, to repudiate their action on the spot, and to be heard by himself; hence the inference is deduced that the judge could not have admitted the evidence, against the protest of the prisoner, without reversing the ordinary presumption, and presuming insanity.

In criminal trials, it is important to keep ever in mind the distinction between law and fact, between the functions of a judge and those of a jury.

It was for the jury, and the jury alone, to determine whether there was insanity or not, after hearing the evidence and the instructions of the Court as to the principles of law applicable to the case.

By receiving the proffered evidence for what it might be worth, the judge would have decided no question of fact: he would merely have told the jury," the law permits you to hear and weigh this evidence; whether it proves anything, it is for you to say."

By rejecting it, he deprived the jury of some of the means of arriving at an enlightened conclusion upon a vital point peculiarly within their province, and, in effect decided himself, and without the aid of all the evidence within his reach, that the prisoner was sane.

It is idle to say that the legal presumption, and the prisoner's own declarations, appearance and conduct on the trial, established his sanity to the satisfaction of both judge and jury;—for presumption may be overthrown, declarations may be unfounded, and conduct and appearances may be deceitful; and the prisoner's counsel, sworn officers of the court, with their professional character at stake upon the loyalty of their conduct, alleged that they stood there prepared to prove by what they deemed clear and irresistible testimony, that the accused was insane at the time of the homicide, long before, and ever since; so that the sole inquiry now is, not whether they or the Court were right as to the fact of sanity upon which we can have no opinion, but, whether they should have been allowed to put the testimony they had at hand before the jury, to be weighed with the counter evidence.

If the prisoner was insane at the time of the trial, as counsel offered to prove, he was incompetent to conduct his own defence unaided, to discharge his counsel, or to waive a right.

Upon the supposition that the counsel were mistaken in regard to the weight of the evidence they wished to offer, as they may have been, still its introduction could do the prisoner no harm, nor could it estop him from any other defence he might choose to make on his own account; neither could it prejudice the State, for it is to be presumed that the jury would have given the testimony its proper weight; if, on the other hand, the counsel were not mistaken as to the legal effect of this evidence, the consequences of its rejection would be deplorable indeed.

The overruling necessity of the case seems to demand that, whenever a previous soundness of mind and consequent accountability for his acts are in question, the rule that he may control or discharge his counsel, at pleasure, should be so far relaxed as to permit them to offer evidence on those points, even against his will. Considering therefore, that it would be more in accordance with sound legal principles and with the humane spirit which pervades even the criminal law, to allow the rejected testimony to go before the jury, the cause must be remanded for that purpose.

It was said in argument, on behalf of the State, that the alleged

insanity was, at most but a monomania upon another topic, which could not exempt the prisoner from responsibility for the homicide.

The judge will instruct the jury in regard to the principles of law which govern this subject, when all the facts shall have been heard. At present, the discussion is premature.

It is therefore ordered, adjudged and decreed that the judgment of the Court below be reversed, the verdict of the jury set aside, and the cause remanded for a new trial according to law.

In the Supreme Court of Texas.

JOHN F. JORDAN *vs.* F. A. POLK.[1]

1. Special administration,—*Power of the County Courts to appoint.*—The County Courts of this State may grant letters of limited administration upon the estates of deceased persons. This power existed under the Act of 1794, ch. 1, § 47, and is clearly created and defined as to the estates of non-resident decedents, by the acts of 1842, chs. 69 and 165. But such special administration does not prevent a grant of the general administration in a *proper case* to a different person; and the two administrations may well subsist together.
2. Same,—*Rights of next of kin and creditors.*—A limited administration, as contemplated by the laws of this State, is not within the letter or spirit of the law prescribing to whom the general administration shall be granted. The next of kin or creditors cannot claim a right to special administration, if occupying an antagonistic relation to those who represent the deceased. So, where the deceased, a non-resident, had no estate in the limits of this State, except the subject of a suit which he was prosecuting at the time of his death against his brother, it was no error in the County Court to refuse the general or special administration to such brother, and confer the special administration upon an indifferent person.

A suit was instituted in the Chancery Court at Columbia, by James F. Jordan against John F. Jordan and others. Pending this suit, James F. Jordan, the complainant, died in Texas, of which State he was a citizen. His interest in this suit was the only estate he left within this State. His counsel applied to the County Court of Maury for letters of special administration to carry on the suit, and recommended the defendant in error for said

[1] Sneed's Texas Reports, vol. 1, p. 430. We are indebted to one of the learned counsel engaged in this cause for an early sheet of this report in advance of publication.—*Eds. A. L. Reg.*